



Squire Patton Boggs (US) LLP  
2550 M Street, NW  
Washington, DC 20037

O +1 202 457 6000  
F +1 202 457 6315  
squirepattonboggs.com

Paul C. Besozzi  
T +1 202 457 5292  
Paul.Besozzi@squirepb.com

September 5, 2017

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: SUBSTITUTE VERSION – REQUEST FOR HIGHLY  
CONFIDENTIAL TREATMENT  
ClearCaptions, LLC  
CG Docket Nos. 03-123 and 13-24

Dear Ms. Dortch:

ClearCaptions, LLC (“ClearCaptions”), pursuant to the *Second Protective Order*, DA 12-858, released May 31, 2012 in CG Docket No. 03-123<sup>1</sup> hereby requests Highly Confidential treatment of certain information contained in the enclosed Notice of Ex Parte (including attachments). ClearCaptions is also submitting a redacted version of this letter pursuant to the *Second Protective Order*.<sup>2</sup>

ClearCaptions hereby requests that all information contained after the headings **\*\*\*BEGIN HIGHLY CONFIDENTIAL INFORMATION\*\*\*** and before the headings **\*\*\*END HIGHLY CONFIDENTIAL INFORMATION\*\*\*** be treated as Highly

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<sup>1</sup> See *Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 10-51 and 03-123, Second Protective Order, 27 FCC Rcd 5914 (rel. May 31, 2012) (“*Second Protective Order*”); see also 47 C.F.R. §§ 0.457, 0.459. Because there is no protective order in effect for CG Docket No. 13-24 at this time, the Consumer and Governmental Affairs Bureau staff has instructed ClearCaptions that it should file this request and the accompanying Notice of Ex Parte only in CG Docket No. 03-123 pending release of a Protective Order for CG Docket No. 13-24.

<sup>2</sup> *Second Protective Order* ¶ 12.

Ms. Marlene H. Dortch  
September 5, 2017  
Page 2

Confidential Information under the *Second Protective Order*.<sup>3</sup> As described below, the information contained in those headings is properly designated as Highly Confidential Information under paragraph 3 of Appendix A of the *Second Protective Order*, and is proprietary and business information that is not customarily disclosed to the public or within the industry and is subject to Exemption 4 under the Freedom of Information Act (“FOIA”).<sup>4</sup> Pursuant to paragraph 3 of the *Second Protective Order*, ClearCaptions has obtained Commission staff’s written preliminary approval to designate the subject information as Highly Confidential.<sup>5</sup>

As this information is submitted voluntarily and absent any requirement by statute, regulation, or the Commission, ClearCaptions requests that, in the event that the Commission denies ClearCaptions’ request for confidentiality, the Commission return the materials without consideration of the contents therein.<sup>6</sup>

*(1) Identification of the specific information for which confidential treatment is sought.*

ClearCaptions hereby seeks Highly Confidential treatment for all of the information in the enclosed Notice of Ex Parte (including attachments) that is contained after the headings **\*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\*** and before the headings **\*\*\*END HIGHLY CONFIDENTIAL\*\*\***, which is properly designated as Highly Confidential Information under paragraph 3 of Appendix A of the *Second Protective Order*.<sup>7</sup>

*(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.*

The attachment to the Notice of Ex Parte was provided to the identified FCC staff during the meetings reported in the Notice of Ex Parte.

*(3) Explanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged.*

The subject information includes, or would potentially permit the determination of, highly sensitive ClearCaptions IP CTS operating cost and other information that would cause harm to ClearCaptions if disclosed. Indeed, revealing this information may allow competitors

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<sup>3</sup> *Second Protective Order* ¶ 2.

<sup>4</sup> *Second Protective Order* Appendix A; 5 U.S.C. § 552(b)(4).

<sup>5</sup> *Second Protective Order* ¶ 3.

<sup>6</sup> 47 C.F.R. § 0.459(e).

<sup>7</sup> *Second Protective Order* Appendix A.

Ms. Marlene H. Dortch  
September 5, 2017  
Page 3

to calculate Highly Confidential Information for ClearCaptions. This information is properly designated Highly Confidential Information under paragraph 3 of Appendix A of the *Second Protective Order* as “[i]nformation that provides granular information about [ClearCaptions]’ past, current, or future costs, revenues, marginal revenues, or market share, and future dividends.”<sup>8</sup> Further, this information constitutes proprietary commercial and business information under Exemption 4 of the FOIA.<sup>9</sup> Accordingly, ClearCaptions hereby requests that such information be treated as Highly Confidential Information under the *Second Protective Order* and not be made routinely available for public inspection.

*(4) Explanation of the degree to which the information contains a service that is subject to competition.*

In order to prevent unauthorized disclosure of the subject information, ClearCaptions is hereby submitting a request that the subject information be treated as Highly Confidential Information indefinitely, and ClearCaptions has obtained Commission staff’s written preliminary approval to designate the designated information as Highly Confidential Information pursuant to paragraph 3 of the *Second Protective Order*. ClearCaptions takes routine measures to ensure the confidentiality of this information during normal business operations, including instructing its employees and contracting partners not to disclose such information outside of ClearCaptions, and restricting access to this information internally.

*(5) Explanation of how disclosure could result in substantial competitive harm.*

The presence of competitors in the IP CTS market and the likelihood of competitive injury to ClearCaptions threatened by release of this information should compel the Commission to withhold the information designated as Highly Confidential Information from public disclosure. The Commission has provided assurances that it is “sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage.”<sup>10</sup>

*(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.*

In order to prevent unauthorized disclosure of the subject information, ClearCaptions is hereby submitting a request that the subject information be treated as Highly Confidential Information indefinitely, and ClearCaptions has obtained Commission staff’s written preliminary approval to designate the subject information as Highly Confidential Information

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<sup>8</sup> *Second Protective Order* Appendix A.

<sup>9</sup> 5 U.S.C. § 552(b)(4).

<sup>10</sup> *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, ¶ 8 (1998).



Ms. Marlene H. Dortch  
September 5, 2017  
Page 4

pursuant to paragraph 3 of the *Second Protective Order*.<sup>11</sup> ClearCaptions takes routine measures to ensure the confidentiality of this information during normal business operations, including instructing its employees and contracting partners not to disclose such information outside of ClearCaptions, and restricting access to this information internally.

- (7) *Identification of whether information is available to the public and the extent of any previous disclosure of the information to third parties.*

The subject information is not ordinarily available to the public or to any third parties.

- (8) *Justification of the period during which the submitting party asserts that material should not be available for public disclosure.*

As described above, the subject information contains highly sensitive ClearCaptions cost and other information covered by paragraph 3 of the *Second Protective Order* that could cause significant competitive injury to ClearCaptions if disclosed.<sup>12</sup> For this reason, ClearCaptions respectfully requests that the Commission protect this information from public disclosure indefinitely.

- (9) *Any other information that the party seeking confidential information believes may be useful in assessing whether its request for confidentiality should be granted.*

As the subject information is being submitted voluntarily, ClearCaptions requests that, in the event that the Commission denies ClearCaptions' request for confidentiality, the Commission return the materials without consideration of the contents therein.

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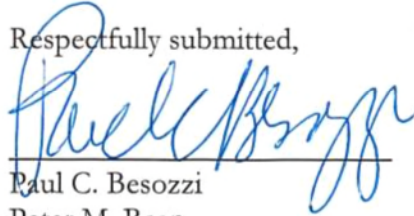
<sup>11</sup> *Second Protective Order* ¶ 3.

<sup>12</sup> 5 U.S.C. § 552(b)(4).

Ms. Marlene H. Dortch  
September 5, 2017  
Page 5

Should you have any questions concerning the foregoing request, please contact the undersigned.

Respectfully submitted,



Paul C. Besozzi

Peter M. Bean

Squire Patton Boggs (US) LLP

2550 M Street, NW

Washington, DC 20037

202-457-5292

202-457-6625

paul.besozzi@squirepb.com

peter.bean@squirepb.com

*Counsel to ClearCaptions, LLC*



Squire Patton Boggs (US) LLP  
2550 M Street, NW  
Washington, DC 20037

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September 5, 2017

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: **SUBSTITUTE VERSION – Notice of Ex Parte – Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Misuse of Internet Protocol (IP) Captioned Telephone Service – CG Docket Nos. 03-123 and 13-24<sup>1</sup>**

Dear Ms. Dortch:

On August 31, 2017, Michael Strecker, Vice President of Regulatory Affairs, ClearCaptions LLC (“ClearCaptions” or “Company”) and Paul C. Besozzi, counsel for ClearCaptions, met with Eliot Greenwald, Deputy Chief, Disability Rights Office (“DRO”), Consumer and Government Affairs Bureau (“CGB”); Robert Aldrich, Front Office Legal Advisor, CGB; Susan Bahr, Attorney Advisor, GCB; Michael Scott, Attorney Advisor, DRO; Andy Multz, Chief, Compliance and Oversight Group, Office of the Managing Director (“OMD”); and David Schmidt, TRS Fund Program Coordinator, OMD, regarding prospective Internet Protocol Captioned Telephone Service (“IP CTS”) rate structure matters.

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<sup>1</sup> Based on discussions with the Consumer and Government Affairs Bureau staff, ClearCaptions is filing this Notice of Ex Parte in CG Docket No. 03-123 subject to the Second Protective Order therein. *See Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 10-51 and 03-123, Second Protective Order, 27 FCC Rcd 5914 (rel. May 31, 2012) (“*Second Protective Order*”). The staff has permitted this approach because there is currently no similar Protective Order applicable to CG Docket No. 13-24.

Ms. Marlene H. Dortch  
September 5, 2017  
Page 2

Thereafter on August 31, Mr. Strecker and Mr. Besozzi also met with Claude Aiken, Wireline Legal Advisor to Commissioner Mignon Clyburn; Nathan Eagan, Acting Wireline Legal Advisor to Commissioner Brendan Carr; and Travis Litman, Wireline Legal Advisor to Commissioner Jessica Rosenworcel, on the same issues.

Mr. Strecker reviewed the key elements of, and justifications for, an IP CTS rate structure model developed by ClearCaptions for the Commission to consider as it formulates future IP CTS rates. Those key elements primarily included: (a) the need for a tiered IP CTS rate structure and (b) assuming the Commission were to adopt a “cost-based” rate structure, the wisdom of an “operating margin approach” to compensate IP CTS providers for capital costs.

On each of these two key issues ClearCaptions pointed out the following:

If the current Multi-state Average Rate Structure system (“MARS”) is to be replaced,<sup>2</sup> ClearCaptions recommended that the Commission consider the benefits of a tiered rate structure for IP CTS. There is recent precedent for doing so as reflected in the Commission’s decision regarding the four-year, tiered Video Relay Service (“VRS”) rate structure.<sup>3</sup> Therein, the FCC recognized that there were “vast differences in the per-minute costs of VRS providers, which roughly track the vastly different market shares of each current provider.”<sup>4</sup> The Commission concluded that maintaining a tiered rate structure for a four-year period was “most likely to ensure that functionally equivalent VRS remains available and is provided in the most efficient manner with respect to TRS Fund resources.”<sup>5</sup> In the final analysis, the FCC concluded that “under a tiered rate structure the Commission can ensure greater efficiency without sacrificing competition, by tailoring compensation rates more closely to the costs of those competitors falling within each tier.”<sup>6</sup>

ClearCaptions also recommended that in formulating any cost-based structure for IP CTS rates that the Commission consider an “operating margin approach” to compensate IP CTS providers for their allowable capital costs. Again, the Company noted that the recent *VRS Order* provides precedent for such an approach. ClearCaptions stated that the range of approximately 8-12% operating margin accepted in the *VRS Order* also provides a reasonable basis for IP CTS rate structuring.

Citing similarities in the concentration of the current estimated IP CTS marketplace, ClearCaptions respectfully submitted that the same rationales that supported a tiered rate

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<sup>2</sup> ClearCaptions agreed that it is wholly appropriate for the Commission to rethink or even abandon an IP CTS rate structure based on MARS.

<sup>3</sup> *In the Matter of the Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 10-51 and 03-123, Report and Order, FCC 17-86 (rel. July 6, 2017) (“*VRS Order*”).

<sup>4</sup> *VRS Order* ¶ 31.

<sup>5</sup> *Id.* ¶ 33.

<sup>6</sup> *Id.* ¶ 37.



Ms. Marlene H. Dortch  
September 5, 2017  
Page 3

structure for VRS should apply to the development of any revised IP CTS rate structure. The Company also reiterated why such a structure would be preferable to a single-rate methodology in light of the current and potential future IP CTS marketplace competition.<sup>7</sup> Specifically, ClearCaptions noted that a single-rate structure based on industry-weighted average costs plus a set operating margin would be directly competitively harmful to the Company. Such a regime would eliminate ClearCaptions' ability to continue its ongoing efforts to develop Automatic Speech Recognition ("ASR") technology for deployment. The Company stressed that it is investing in, and committed to providing, high quality IP CTS and growing its share of that market in accordance with the Commission's rules. Any immediate cut to a single-rate structure, without any transition period (e.g., two years), would directly threaten ClearCaptions' ability to continue to do so and likely leave the IP CTS market with just two providers.<sup>8</sup>

ClearCaptions provided the attached slides in support of these points and its 4-tiered IP CTS rate model and reviewed how the data therein supported these two key points, including the potential savings to the TRS Fund if adopted.<sup>9</sup>

Finally, the Company reiterated that it looks forward to participating in the process for developing a restructured IP CTS rate methodology.

This filing is made in accordance with Section 1.1206(b)(1) of the Commission's rules.<sup>10</sup>

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<sup>7</sup> As the Commission noted in the *VRS Order* in rejecting a single rate structure, where there is an imbalance in providers' cost structures, "this method would be likely to result in greatly increased TRS Fund expenditures because the most efficient provider—with the overwhelming bulk of minutes—would be compensated at a rate far in excess of its actual costs." *Id.* ¶ 32.

<sup>8</sup> Even one of the two dominant providers has warned against such a dramatic change. *See* Letter from Scott R. Freiermuth, Counsel, Government Affairs, Federal Regulatory, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated, August 31, 2017, CG Docket Nos. 13-24 and 03-123.

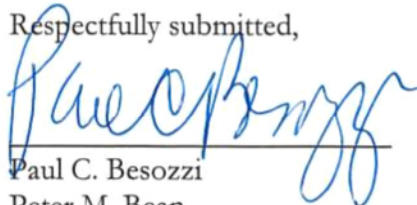
<sup>9</sup> The slides contain Highly Confidential Information subject to the *Second Protective Order*.

<sup>10</sup> 47 C.F.R. § 1.1206(b)(1).



Ms. Marlene H. Dortch  
September 5, 2017  
Page 4

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Paul C. Besozzi", written over a horizontal line.

Paul C. Besozzi

Peter M. Bean

Squire Patton Boggs (US) LLP

2550 M Street, NW

Washington, DC 20037

202-457-5292

202-457-6625

paul.besozzi@squirepb.com

peter.bean@squirepb.com

*Counsel to ClearCaptions, LLC*

cc: Eliot Greenwald  
Robert Aldrich  
Susan Bahr  
Michael Scott  
Andy Mulitz  
David Schmidt  
Claude Aiken  
Nathan Eagan  
Travis Litman

## 4 Tier IP CTS Rate Model



At Home



At Work



On The Go

**CONFIDENTIAL INTERNAL DOCUMENTS**

*PRIVILEGED MATERIALS – DO NOT FORWARD THIS PRESENTATION OR THE INFORMATION CONTAINED HEREIN*

**HIGHLY CONFIDENTIAL**

# Current Estimated Market Share

\*\*\* BEGIN HIGHLY CONFIDENTIAL INFORMATION \*\*\*

\*\*\* END HIGHLY CONFIDENTIAL INFORMATION \*\*\*

# ClearCaptions Cost of Goods Sold

\*\*\* BEGIN HIGHLY CONFIDENTIAL INFORMATION \*\*\*

\*\*\* END HIGHLY CONFIDENTIAL INFORMATION \*\*\*

- There is a clear differentiation in COGS between providers who provide their own technological solution vs those that outsource



# ClearCaptions Pro-Forma Opex at Volume

\*\*\* BEGIN HIGHLY CONFIDENTIAL INFORMATION \*\*\*

\*\*\* END HIGHLY CONFIDENTIAL INFORMATION \*\*\*

## ClearCaptions 4 Tier Model

4 Tier Model					
	Minute Threshold			Tier Min value	Proposed Rate
Tier 1	-	to	3,500,000	3,500,000	1.9467
Tier 2	3,500,000	to	7,000,000	3,500,000	1.4289
Tier 3	7,000,000	to	10,000,000	3,000,000	1.2475
Max Tier	10,000,000	>			1.0403

- Due to the overall scale of IP CTS, the tiers needs to accommodate the realities of the market and industry.
- \*\*\* BEGIN HIGHLY CONFIDENTIAL INFORMATION\*\*\* \*\*\* END HIGHLY CONFIDENTIAL INFORMATION
- An ASR rate would be a flat rate reduction to the tiers that enabled slight margin improvements to encourage our conversion to ASR.
  - ASR would not impact the current tier breaks, but instead would be a lower rate at each break for traffic processed with a new ASR process. While we are deep in our creation of ASR technologies for IP-CTS, we are not far enough along to predict the reduction from the above proposed rates.

## 4 Tier Rate Model vs ClearCaptions Pro-Forma Opex

\*\*\* BEGIN HIGHLY CONFIDENTIAL INFORMATION \*\*\*

\*\*\* END HIGHLY CONFIDENTIAL INFORMATION \*\*\*

## Benefits of a 4 Tier Model

	<u>CY 2017</u>	<u>Avg. Realized Rate</u>
Minutes	377,985,187	
MARS Payments	\$ 735,823,763	\$1.95
4 Tier Payments	\$ 590,267,774	\$1.56
Savings to the Fund	\$ <b>145,555,989</b>	

*\* Based on ClearCaptions estimated Industry minutes for CY 2017*

### Benefits of ClearCaptions 4 Tier Model

- For CY 2017, saves the fund approximately \$146M
- Enables efficient, competitive providers to remain financially viable
- Better aligns rates with actual provider costs while achieving a reasonable operating margin
- Establishes a consistent and reliable glide path while adjusting to market realities: share distribution, scale economies and provider costs
- Ensures providers continue to seek efficiencies as they gain scale